

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING ON
Rules I and II, the amendment of)	PROPOSED ADOPTION,
ARM 37.106.301, 37.106.302,)	AMENDMENT, AND
37.106.306, 37.106.310, 37.106.313,)	REPEAL
37.106.314, 37.106.320, 37.106.321,)	
37.106.322, 37.106.330, and)	
37.106.331, and the repeal of)	
37.106.311 pertaining to minimum)	
standards for all health care facilities)	

TO: All Concerned Persons

1. On July 10, 2013, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the Auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on July 3, 2013, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES: EMPLOYEE FILES (1) The facility is responsible for maintaining a file on each employee and substitute personnel. Employee files may be inspected by the department at any time. If the file is not maintained at the facility it must be available to the department within 24 hours of request.

(2) At a minimum, the employee file must contain:

- (a) the employee's name;
- (b) a job description signed by the employee;
- (c) documentation of employee orientation, signed by the employee; and
- (d) a copy of current credentials, certification, or professional licenses required to perform the duties described in the job description.

(3) Volunteers may be utilized at a health care facility, but may not be included in the facility staffing plan in lieu of employees. All volunteers must have a file which is maintained at the facility and documents the following:

- (a) orientation to the facility and its residents; and
- (b) orientation to and training of the duties to be performed.

AUTH: 50-5-103, MCA

IMP: 50-5-103, 50-5-106, 50-5-204, MCA

NEW RULE II MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES: SECURED CARE UNIT WITHIN A LICENSED LONG-TERM HEALTH CARE FACILITY (1) All rules in this subchapter apply to secured care units.

(2) Special locking arrangements as specified in the 2012 Edition of the NFPA Life Safety Code must be utilized, or an acceptable alternative is based on an equivalency for the automatically releasing, panic hardware required by section 7.2.1.6.1 of the Life Safety Code. Where local authorities having jurisdiction allow, the following conditions apply to this alternative:

(a) All locks must be electromagnetic. The use of mechanical locks, such as a deadbolt is not permitted;

(b) All of the secured doors must have a manual electronic keypad release. The keypad must release the lock(s) on the door(s) after entry of the proper code sequence;

(c) The code sequence must be posted in the vicinity of each keypad and may be inconspicuous;

(d) Provisions must be made for the rapid removal of occupants by such reliable means as the remote control of the locks. Typically this is done by placing a staff-accessible switch at the nurse's station which is capable of releasing all doors; and

(e) All the locks on all secured doors must automatically release upon any of the following conditions:

- (i) the actuation of the approved supervised automatic fire alarm system;
- (ii) the actuation of an approved supervised automatic sprinkler system; and
- (iii) upon the loss of power controlling the lock(s) or locking mechanism.

(3) A secured care unit is considered a separate nursing unit and must have a nurse station located within the secured care unit. At a minimum, the nurse station must provide the following:

- (a) provisions for charting;
- (b) provisions for hand washing;
- (c) provisions for medication storage and preparation;
- (d) telephone access; and

(e) a nurse call system in compliance with table 2.1-4 as found in the 2010 Edition of the AIA Guidelines for Design and Construction of Hospital and Health Care Facilities.

(4) The nurse call system for the secured care unit must report to the secured care unit nurse station, but may also annunciate the call at another location, such as a main nurse station.

(5) Space within the secured care unit used for dining, activities, and day space must be provided at a ratio of 35 square feet per resident, with at least 20 square feet per resident dedicated to the dining space.

(6) No more than two secured care unit residents can reside in a single room.

(7) Each secured care unit resident must have access to a toilet without entering the corridor.

(a) Doors to bathrooms may be removed in private rooms.

(8) A secured care unit must provide for a nourishment station. The minimum standards for a nourishment station as indicated in section 2.5-2.2.6.7 of the 2010 Edition of the AIA Guidelines for Design and Construction of Hospital and Healthcare facilities include:

(a) a work counter;

(b) a refrigerator;

(c) storage cabinets;

(d) space for trays and dishes used for nonscheduled meal service;

(e) an icemaker dispenser unit for patient ice consumption within or in close proximity to the secured care unit;

(f) a sink for preparing nourishments between meals; and

(g) hand washing facilities that are in or immediately accessible from the nourishment station.

(9) A secured care unit must provide secured care unit residents access to large group activities when provided for the general population, such as holiday activities and special events as determined appropriate.

AUTH: 50-5-103, MCA

IMP: 50-5-103, 50-5-204, MCA

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.106.301 DEFINITIONS The following definitions apply in this subchapter:

(1) "Administrator" means the individual responsible for the day-to-day operation of a ~~hospital, skilled or intermediate~~ health care facility. ~~This individual may also be known as, but not limited to, "chief executive officer", "executive director", or "president".~~

(2) ~~"Adult day care center" means a facility as defined in 50-5-101(2), MCA, but does not include day habilitation programs for the developmentally disabled and handicapped or a program offered by a church or senior citizens organization for purposes other than provision of custodial care necessary to meet daily living needs.~~

(3) (2) "Communicable disease" means an illness due or suspected to be due to a specific infectious agent or its toxic products, which results from transmission of that agent or its products to a susceptible host directly or indirectly, and includes a dangerous communicable disease. a disease that may be transmitted directly or indirectly from one individual to another.

(4) ~~"Coronary care unit" means an area within the hospital where there is a concentration of physicians, nurses, and other staff who have special skills and experience in providing care for critically ill cardiac patients.~~

(5) ~~"Diagnostic" means the art, science or method of distinguishing signs or symptoms of a diseased condition.~~

(6) ~~"Hospitalization" means being hospitalized or admitted to a hospital.~~

(7) ~~"Hospital record" means written records of admissions, discharges, total patient days, register of operations performed and outpatients treated.~~

(8) (3) "Inpatient" means a patient lodged and fed in a person who has been admitted to a hospital for bed occupancy for purposes of receiving inpatient hospital services facility while receiving treatment.

(9) ~~"Intensive care unit" means an area within the hospital where there is a concentration of physicians, nurses, and other staff who have specialized skills and experience in providing care for critically ill medical and surgical patients.~~

(10) ~~"Manager" means the individual responsible for the day-to-day operation of a health care facility, excluding a hospital, skilled or intermediate care facility.~~

(11) (4) "Medical record" means a written document which is complete, current, and contains sufficient information for planning a patient's, or resident's, or client's care, reviewing and evaluating care rendered, evaluating a patient's, or resident's, or client's condition, and for providing a means of communication among all persons providing care.

(12) ~~"Obstetrical service" means an area within the hospital which provides care for a maternity patient including but not limited to labor, delivery and postpartum care.~~

(5) "Observation bed or unit" means a bed or unit within a hospital, critical access hospital, specialty hospital, or medical assistance facility that includes ongoing short-term treatment, assessment and reassessment, and is not considered an inpatient bed.

(a) Patient stays in observation beds are limited to 48 hours during which time a decision must be made whether a patient requires further treatment as an inpatient.

(b) Observation beds cannot be located in secured care units.

(13) (6) "Outpatient" means a person receiving health care services and treatment at a facility for a period of less than 24 hours without being admitted as an inpatient to the facility.

(7) "Secured care unit" means a licensed facility or unit of a facility that provides care in an environment where the doors are secured by delayed egress locks 24 hours a day.

(14) ~~"Supervise" means to oversee and direct staff by being present in the health care facility.~~

AUTH: 50-5-103, MCA

IMP: 50-5-101, 50-5-103, 50-5-104, 50-5-105, 50-5-106, 50-5-107, 50-5-108, 50-5-109, 50-5-201, 50-5-202, 50-5-203, 50-5-204, 50-5-207, 50-5-208, 50-5-210, 50-5-211, 50-5-212, 50-5-221, 50-5-225, 50-5-226, 50-5-227, 50-5-228, 50-5-229, 50-5-230 and 50-5-231, MCA

37.106.302 MINIMUM STANDARDS OF CONSTRUCTION FOR A LICENSED HEALTH CARE FACILITY: ADDITION, ALTERATION, OR NEW CONSTRUCTION: GENERAL REQUIREMENTS (1) The provisions of this

subchapter apply to all health care facilities licensed or to be licensed by the department. To the extent that other licensure rules in ARM Title 37, chapter 106, subchapter 3 conflict with the terms of facility-specific rules, the specific facility rules will apply.

~~(1) (2)~~ Except as may otherwise be provided in ~~(2)~~ of this rule, a health care facility and ~~the~~ construction of, alteration, or addition to a health care facility shall comply with:

~~(a) all standards set forth in:~~

~~(i) (a)~~ the ~~2004~~ 2010 edition of the AIA Guidelines for Design and Construction of Hospitals and Health Care Facilities which the department adopts and incorporates by reference, which sets forth the minimum construction equipment requirements deemed necessary by the state Department of Public Health and Human Services to ensure health care facilities can be efficiently maintained and operated to furnish adequate care. and NFPA 101, "Life Safety Code", 2000 edition, except that a facility already licensed under an earlier edition of the "Life Safety Code" published by the national fire protection association, is not required to comply with later editions of the "Life Safety Code". Copies of the cited editions are available at the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT, 59620-2953; and at the following web site <http://www.fgiguilines.org/guidelines2010.php>;

~~(b)~~ NFPA 101, "Life Safety Code", 2012 edition published by the national fire protection association, which the department adopts and incorporates by reference, which sets forth construction and operation requirements designed to protect against fire hazards. Copies of the cited edition are available at the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT, 59620-2953; and at the following web site <http://www.nfpa.org/aboutthecodes/AboutTheCodes.asp?DocNum=101&cookie%5Ftest=1>;

~~(ii) (c)~~ the ~~1992~~ 2009 "American National Standards Institute A117.1" which the department adopts and incorporates by reference, which sets forth standards for buildings and facilities providing accessibility and usability for physically handicapped individuals. Copies of the cited edition are available at the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT, 59620-2953; and at the following web site <http://webstore.ansi.org/RecordDetail.aspx?sku=ICC+A117.1-2009>;

~~(b) (d)~~ the water supply system requirements of ARM 37.111.115; and

~~(c) (e)~~ the sewage system requirements of ARM 37.111.116.

~~(2) A personal care facility, chemical dependency treatment center, or a free-standing adult day care center:~~

~~(a) must meet all applicable building and fire codes and be approved by the officer having jurisdiction to determine if the building codes are met by the facility and by the state fire marshal or his designee;~~

~~(b) meet the water and sewer system requirements in (1)(b) and (c) above.~~

~~(3) A patient or resident may not be admitted, housed, treated, or cared for in an addition or altered area until inspected and approved, or in new construction until licensed.~~

~~(4) The department hereby adopts and incorporates by reference:~~

~~(a) The 2001 Guidelines for Design and Construction of Hospital and Health Care Facilities which set forth minimum construction and equipment requirements deemed necessary by the state department of public health and human services to ensure health care facilities can be efficiently maintained and operated to furnish adequate care.~~

~~(b) NFPA 101, "Life Safety Code 2000 edition", published by the national fire protection association, which sets forth construction and operation requirements designed to protect against fire hazards.~~

~~(c) ARM 37.111.115, which sets forth requirements for construction and maintenance of water supply systems, including supplies of ice.~~

~~(d) ARM 37.111.116, which sets forth requirements for construction and maintenance of sewage systems.~~

~~(e) The 1992 "American National Standards Institute A117.1", which sets forth standards for buildings and facilities, providing accessibility and usability for physically handicapped individuals.~~

~~(f) Copies of the materials cited above are available at the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.~~

AUTH: 50-5-103, MCA

IMP: 50-5-103, 50-5-201, 50-5-204, MCA

37.106.306 SUBMISSION OF PLANS AND SPECIFICATIONS: A NEW INSTITUTIONAL HEALTH CARE SERVICE FACILITY NEW CONSTRUCTION, :
ALTERATION OR ADDITION TO A HEALTH CARE FACILITY (1) ~~A person who contemplates construction of a new institutional health service and has been issued a certificate of need pursuant to Title 50, chapter 5, part 3, MCA, and ARM Title 37, chapter 106, subchapter 1 shall submit plans and specifications to the department for preliminary inspection and approval prior to commencing construction and shall comply with the following procedures.~~

~~(a) At least nine months prior to the time a person commences construction, he shall submit a program and schematic plans to the department. This is a maximum time limit. A person may submit a program and schematic plans as soon as he desires after he receives a certificate of need.~~

~~(i) The program must include the following:~~

~~(A) a narrative description of the rooms or spaces to be included in each department, explaining the functions or services to be provided in each, indicating the size, the number of personnel and the kind of equipment or furniture it will contain;~~

~~(B) for inpatient facilities, a schedule showing total number of beds and number of bedrooms.~~

~~(ii) The schematic plans must include the following:~~

~~(A) single line drawings of each floor which must show the relationship of the various departments or services to each other and the room arrangement in each department. The name of each room must be noted;~~

~~(B) the proposed roads and walks, service and entrance courts, and parking must be shown on the plot plan;~~

~~(C) total floor area and number of beds must be noted on the plans.~~

~~(b) At least three months prior to the time a person commences construction, he shall submit working drawings and specifications to the department. This is a maximum time limit. A person may submit working drawings and specifications as soon as he desires after the department has approved his program and schematic plans.~~

~~(i) The working drawings must be complete and adequate for bid, contract and construction purposes and must be prepared for each of the following branches of the work: architectural, structural, mechanical and electrical.~~

~~(A) Architectural drawings must include a plot plan showing all new topography, newly established levels and grades, any existing structures on the site, new buildings and structures, roadways, walks and the extent of the areas to be seeded. Any structures and improvements which are to be removed as part of the work must be shown. A print of the site survey drawing must be included with the working drawings. The architectural drawings must also include the following:~~

~~(I) plan of each basement, floor and roof;~~

~~(II) elevations of each facade;~~

~~(III) sections through building;~~

~~(IV) required scale and full-size details;~~

~~(V) schedule of doors and finishes;~~

~~(VI) location of all fixed equipment;~~

~~(VII) adequate details of any conveying system.~~

~~(B) Structural drawings must include plans for foundations, floors, roofs and all intermediate levels with sizes, sections and the relative location of the various structural members.~~

~~(C) Mechanical drawings must include plans for plumbing, heating, ventilation, air conditioning, and refrigeration.~~

~~(D) Electrical drawings must include the complete power and lighting layout of all electrical systems to be included in the construction and must include telephone layouts, nurse call system, fire alarm system and the emergency electrical system.~~

~~(c) Specifications must supplement the working drawings to fully describe types, sizes, capacities, workmanship, finishes and other characteristics of all materials and equipment.~~

~~(d) All plans and specifications must be certified by an engineer or architect licensed to practice in Montana and the certification must state that the plans and specifications are prepared in accordance with the requirements of this subchapter.~~

~~(2) A person who contemplates an alteration or addition to a health care facility which does not qualify as a new institutional health service shall submit plans to the department for preliminary inspection and approval prior to commencing construction and shall comply with the following procedures:~~

~~(a) A person who contemplates an addition to an existing health care facility shall comply with the requirements set forth in (1) of this rule.~~

~~(b) If an alteration to a health care facility is contemplated, a program and schematic plans shall be submitted to the department at least six months prior to commencing construction of the alteration. Within 30 days after this submittal, the~~

department may request a person to comply with the requirements set forth in ARM 37.106.306(1)(b).

~~(c) The department's approval of an alteration or addition shall terminate one year after issuance.~~

(1) Prior to beginning construction of a new health care facility or before construction of an addition or alteration to a health care facility, the following plans and specifications must be submitted to the department for approval:

(a) schematic plans which include but are not limited to:

(i) single line drawings of each floor;

(ii) the name of each room and the relationship of the various departments or services to each other and the room arrangement in each department must be noted;

(iii) total floor area and number of beds must be noted on the plans;

(iv) the proposed roads and walks, service and entrance courts, and parking must be shown on the site plan; and

(v) if requested by the department, submission of a narrative regarding a specific schematic function to clarify and provide additional information.

(b) the plans must be complete and adequate for bid, contract, and construction purposes, and include but are not limited to a complete set of the following:

(i) civil;

(ii) landscape;

(iii) architectural;

(iv) structural;

(v) mechanical;

(vi) plumbing;

(vii) electrical; and

(viii) special systems which include, but are not limited to, nurse call systems, fire alarms systems, and secured units.

(c) specifications supplementing the working drawings to fully describe types, sizes, capacities, workmanship, finishes, and other characteristics of all materials and equipment.

(2) All submitted plans and specifications must be stamped by an engineer or architect licensed to practice in Montana.

(3) The department's approval of an alteration or addition to a health care facility shall terminate one year after issuance or upon completion and acceptance of the project.

(a) A six-month extension is permitted upon request. The request must verify that plans are still the same and no changes have been made to the specifications.

AUTH: 50-5-103, MCA

IMP: 50-5-103, 50-5-201, 50-5-204, MCA

37.106.310 LICENSING: PROCEDURE FOR OBTAINING A LICENSE: ISSUANCE AND RENEWAL OF A LICENSE ~~(1) A person shall comply with the following procedures when applying to the department for a license:~~

~~(a) A person shall submit a completed license application form to the department, at least 30 days prior to the opening of a facility and annually thereafter. A person can obtain a license application form from the department.~~

~~(b) A completed license application form must contain the following information:~~

~~(i) the name and address of the applicant if an individual; the name and address of each member of a firm, partnership, or association; or the name and address of each officer if a corporation;~~

~~(ii) the location of the facility;~~

~~(iii) the name of the person or persons who will administer, manage or supervise the facility;~~

~~(iv) the number and type of patients or residents for which care is provided;~~

~~(v) the number of employees in all job classifications;~~

~~(vi) a copy of the contract, lease agreement or other document indicating the person legally responsible for the operation of the health care facility if the health care facility is operated by a person other than the owner; and~~

~~(vii) designated name of health care facility to be licensed.~~

~~(A) The designated name of the health care facility may not be changed without first notifying the department in writing.~~

(1) A completed license application form must be submitted to the department.

(a) The application must be obtained from the department.

(b) The administrator or designee of the health care facility must sign the completed license application form.

~~(c) Each application form must be accompanied by the applicable license fee:~~

~~(i) \$20 license fee for a health care facility with 20 beds or less;~~

~~(ii) \$1 per bed for a health care facility with 21 beds or more.~~

~~(d) The owner or operator of a health care facility shall sign the completed license application form.~~

~~(2) On receipt of a new or renewal license application, the department or its authorized agent shall will inspect the health care facility to determine if the proposed staff is qualified and the facility meets the minimum regulatory standards set forth in this subchapter and other rules specific to the facility type as applicable. If minimum standards are met and the proposed staff is qualified, the department shall issue a license for one year.~~

(3) If minimum regulatory standards are met and the proposed staff is qualified, the department may issue a license for periods of up to three years.

(a) A three-year license may be offered to any facility:

(i) that has received a deficiency-free survey;

(ii) that has achieved accreditation by a recognized accrediting organization;

or

(iii) that has received a survey from another recognized department entity and the results of that survey determine that the facility meets the minimum requirements for issuance of a license.

(b) A two-year license may be offered to any facility:

(i) that has received minor deficiencies, but those deficiencies do not significantly affect or threaten the health, safety, and welfare of any facility patient or resident.

(c) A one-year license may be offered to any facility:

(i) that has been in operation for less than one year;

(ii) upon a change in ownership; or

(iii) that has received deficiencies within the preceding 12 months that threaten the health, safety, and welfare of residents or staff.

~~(a) A patient or resident may not be admitted or cared for in a health care facility unless the facility is licensed.~~

~~(b) (4) Licensed premises must be open to inspection by the department or its authorized agent and access to all records must be granted to the department at all reasonable times.~~

~~(c) The department may issue a provisional license for a period less than one year if continued operation of the health care facility will not result in undue hazard to patients or residents or if demand for the accommodations offered is not met in the community.~~

AUTH: 50-5-103, MCA

IMP: 50-5-103, 50-5-202, 50-5-203, 50-5-204, MCA

37.106.313 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES: COMMUNICABLE DISEASE CONTROL (1) All health care facilities shall develop and implement an infection prevention and control program. At a minimum, the facility shall must develop, implement, and review, at least annually, written policies and procedures regarding infection prevention and control which must include, but are not be limited to; ~~procedures to identify high risk individuals and what methods are used to protect, contain or minimize the risk to patients, residents, staff and visitors.~~

(a) procedures to identify high risk individuals; and

(b) the identification of methods used to protect, contain, or minimize the risk to patients, residents, staff, and visitors.

~~(2) The administrator, or designee or infection control officer, shall will be responsible for the direction, provision, and quality of infection prevention and control services.~~

AUTH: 50-5-103, 50-5-404, MCA

IMP: 50-5-103, 50-5-204, 50-5-404, MCA

37.106.314 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES: MEDICAL RECORDS (1) A health care facility shall must initiate and maintain by ~~storing in a safe manner and in a safe location~~ a safe, secure, and confidential medical record for each patient, and resident, or client.

~~(2) A health care facility, excluding a hospital, shall retain a patient's, or resident's, or client's medical records for no less than five six years following the date of the patient's, or resident's, or client's discharge or death, or upon the closure of the facility.~~

~~(3) A medical record may be microfilmed or preserved via any other electronic medium that yields a true copy of the record if the health care facility has the equipment to reproduce records on the premises.~~

~~(4) A signature of a physician may not be stamped on a medical record unless there is a statement in the facility administrator's or manager's file signed by the physician stating that the physician is responsible for the content of any document signed with his rubber stamp.~~

AUTH: 50-5-103, ~~50-5-404~~, MCA

IMP: 50-5-103, 50-5-106, 50-5-204, ~~50-5-404~~, MCA

37.106.320 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES: PHYSICAL PLANT AND EQUIPMENT MAINTENANCE (1) Each facility ~~shall~~ must have a written maintenance program describing the procedures ~~that must be utilized by maintenance personnel to keep the building, grounds, and equipment in good repair and free from hazards.~~

(2) A health care facility ~~shall~~ must provide housekeeping services on a daily basis.

(3) All electrical, mechanical, plumbing, fire protection, heating, and sewage disposal systems must be kept in operational condition.

(4) Floors must be ~~covered with an easily cleanable covering; e.g., resilient flooring or ceramic tile~~ kept clean and in good repair at all times. ~~This covering must be cleaned daily.~~

~~(5) Carpets are prohibited in bathrooms, kitchens, laundries, or janitor closets.~~

~~(6)~~ (5) Walls and ceilings must be kept in good repair and be of a finish that can be easily cleaned.

~~(7)~~ (6) Every facility must be kept clean and free of odors. Deodorants may not be used for odor control in lieu of proper ventilation.

~~(8)~~ (7) The temperature of hot water supplied to handwashing and bathing facilities must not exceed 120°F.

AUTH: 50-5-103, ~~50-5-404~~, MCA

IMP: 50-5-103, 50-5-204, ~~50-5-404~~, MCA

37.106.321 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES: ENVIRONMENTAL CONTROL (1) and (2) remain the same.

~~(3) A health care facility shall develop and follow a written infection control surveillance program describing the procedures that must be utilized by the entire facility staff in the identification, investigation, and mitigation of infections acquired in the facility.~~

~~(4)~~ (3) Cleaners used in to cleaning bathtubs, showers, lavatories, urinals, toilet bowls, toilet seats, and floors must contain fungicides or germicides with current EPA registration for that purpose.

~~(5)~~ (4) Cleaning devices used for lavatories, toilet bowls, showers, or bathtubs may not be used for other purposes. Those ~~utensils~~ tools used to clean toilets or urinals must not be allowed to contact other cleaning devices.

~~(6) Dry dust mops and dry dust cloths may not be used for dusting or other cleaning purposes. Treated mops, wet mops, treated cloths, moist cloths or other means approved by the department which will not spread soil from one place to another must be used for dusting and cleaning and must be stored separately from the cleaning devices described in (5) above.~~

~~(7)~~ (5) A minimum of 10 foot-candles of light must be available in all rooms and hallways, with the following exceptions:

(a) all reading lamps must have a capacity to provide a minimum of 30 foot-candles of light;

(b) all toilet and bathing areas must be provided with a minimum of 30 foot-candles of light;

(c) general lighting in food preparation areas must be a minimum of 50 foot-candles of light; and

(d) hallways must be illuminated at all times by at least a minimum of five foot-candles of light at the floor.

AUTH: 50-5-103, 50-5-404, MCA

IMP: 50-5-103, 50-5-204, 50-5-404, MCA

37.106.322 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES:

DISASTER PLAN (1) A All health care facility's facilities shall must develop a written disaster plan in conjunction with other emergency services in the community which must include a procedure that will be followed in the event of a natural or man-caused disaster. as follows:

(a) skilled nursing facilities (long-term care), outpatient centers for primary care, outpatient centers for surgical services, critical access hospitals, hospitals, residential hospice facilities, inpatient hospice facilities, and infirmaries must develop a written disaster plan in conjunction with other emergency services in the community;

(b) these procedures must be developed such that they can be followed in the event of a natural or man-caused disaster.

(2) A The health care facility facilities identified in (1) must shall conduct a drill review or physical exercise of such procedures at least once a year. After a drill, review or exercise a health care facility shall prepare and retain on file for a minimum of three years a written report including, but not limited to, the following:

(a) date and time of the drill review or exercise;

(b) the names of staff involved in the drill review or exercise;

(c) the names of other health care facilities, if any, which were involved in the drill review or exercise;

(d) the names of other persons involved in the drill review or exercise;

(e) a description of all phases of the drill procedure and suggestions for improvement; and

(f) the signature of the person conducting the drill review or exercise.

(3) Adult day care facilities, adult foster care homes, assisted living facilities, chemical dependency treatment centers, end-stage renal dialysis facilities, intermediate care facilities for the developmentally disabled, mental health centers, outdoor behavioral facilities, residential treatment facilities, retirement homes, and

specialty mental health facilities must develop a written disaster plan for their facility, and conduct a documented review of the disaster plan with all facility staff annually. This documentation must be maintained at the facility for a minimum of three years. The disaster plan must include:

(a) plans for remaining at the facility during and subsequent to the disaster. Plans must include such elements as acquisition of additional blankets, water, food, etc.; and

(b) plans for resident evacuation and identification of at least one off-site evacuation point. A written agreement must be maintained in the facility record and updated annually.

(4) Fire drills must be conducted at all health care facilities.

(a) health care facilities that house patients or residents must conduct at least four fire drills annually, no closer than two months apart, with at least one drill occurring on each shift. Drill observations must be documented and maintained at the facility for at least two years. The documentation must include:

(i) location of the drill;

(ii) documentation that identifies participating staff;

(iii) problems identified during the drill;

(iv) steps taken to correct such problems; and

(v) signature of the individual responsible for the day-to-day operation of the health care facility.

AUTH: 50-5-103, 50-5-404, MCA

IMP: 50-5-103, 50-5-204, 50-5-404, MCA

37.106.330 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES: WRITTEN POLICY AND PROCEDURE (1) A current written policy and procedure manual that describes ~~for~~ all services provided in a the health care facility must be developed, implemented, and maintained at the facility. The manual must be available to staff, residents and visitors and ~~followed by all~~ must be complied with by all facility personnel and its agents. Policies and procedures must be reviewed at least annually by either the administrator or the medical director with written documentation of the review.

AUTH: 50-5-103, 50-5-404, MCA

IMP: 50-5-103, 50-5-204, 50-5-404, MCA

37.106.331 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES: LAUNDRY AND BEDDING (1) If a health care facility processes its laundry on the facility site, it must:

(a) ~~set aside and utilize~~ use a room~~s~~ solely for laundry purposes;

(b) equip the laundry room with a at least one mechanical washer and hot air tumble dryer, ~~(or additional machines if necessary to handle the laundry load)~~, handwashing facilities, mechanical ventilation to the outside, a fresh air supply, and a hot water supply system which supplies the washer with water of at least 160°F (71°C) during each use; If the laundry water temperature is less than 160°F,

chemicals and detergent suitable to the water temperature and the manufacturer's recommended product time of exposure must be utilized.

(c) and (d) remain the same.

(e) dry all bed linen, towels, and washcloths ~~in the dryer, or, in the case of bed linen, by use of a flatwork ironer~~ in a manner that protects against contamination;

(f) protect clean laundry from contamination; and

(g) ensure that facility staff handling laundry cover their clothes while working with soiled laundry, use separate clean covering for their clothes while handling clean laundry, and wash their hands both after working with soiled laundry and before they handle clean laundry.

(2) If laundry is cleaned off-site, the health care facility must utilize a commercial laundry ~~(not self-service)~~ which satisfies the requirements stated in (1)(a) through (g) ~~above~~.

(3) A health care facility with beds must:

(a) keep each resident bed dressed in clean bed linen in good condition;

(b) keep a supply of clean bed linen on hand sufficient to change beds often enough to keep them clean, dry, and free from odors;

(c) supply each resident at all times with clean towels and washcloths;

(d) provide each resident bed with a moisture-proof mattress or a moisture-proof mattress cover and mattress pad; and

(e) provide each resident with enough blankets to maintain warmth while sleeping.

AUTH: 50-5-103, ~~50-5-404~~, MCA

IMP: 50-5-103, 50-5-204, ~~50-5-404~~, MCA

5. The department proposes to repeal the following rule:

37.106.311 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES: FOOD SERVICE ESTABLISHMENTS, found on page 37-25991 of the Administrative Rules of Montana.

AUTH: 50-5-103, 50-5-404, MCA

IMP: 50-5-103, 50-5-204, 50-5-404, MCA

6. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing new rules and amendments to rules pertaining to minimum standards for all health care facilities.

The Construction and Minimum Standards for All Health Care Facilities subchapter establishes minimum standards for all health care facility types regulated and licensed by the Licensure Bureau. Whereas each of the health care facility types have specialized rules governing them, this subchapter acts as an umbrella over

them all, and as such deals with issues that all health care facilities encounter, such as physical environments, medical records, policies and procedures.

Most changes concern updating incorporated guidelines, removing outdated language, and making this subchapter consistent with the other rules regulating other specific types of health care facilities.

Many of the changes are being made to implement better organization, proper rule numbering and to correct grammatical and spelling errors. Punctuation is amended to comply with ARM rule formatting requirements. In an effort to align our rules with the recommendations from the Federal Plain Language.gov organization, as well as guidance from our own Office of Legal Affairs, the department has reviewed the document and changed references of "shall" to "must" or to another more appropriate term.

As part of a periodic review, the department is amending its rules throughout to eliminate outdated and unnecessary provisions, clarify language as a result of definitional changes, and align terminology with language currently being used in the industry. For example, the definition of "communicable disease" has been changed to the definition stated by Taber's Cyclopedic Medical Dictionary 20th Edition. Taber's is widely used in the medical community and its definition is more universal than the one currently stated in this rule.

A rule that is proposed to change significantly is the rule dealing with disaster drills and requiring fire drills for all health care facilities. It is extremely difficult for some facilities to comply with the current rule. Additionally, rules have been added to establish minimum standards for employee files and secured care units.

NEW RULE I

New Rule I is necessary as currently no such requirements are made concerning employee files. The requirement to make the files available within 24 hours is necessary as many facilities keep employee files in a central location (home office, headquarters, etc.), making it impossible for surveyors to ascertain if an employee is appropriately trained for the specific facility. However, in light of the fact that many facility types do maintain employee files at a site other than the actual facility, it was determined that a 24-hour timeframe in which a facility could make the requested files available would be appropriate.

NEW RULE II

New Rule II is based on department policy and the NFPA 101 "Life Safety Code 2012 Edition", both of which have been used by the department to address the locking mechanisms in secured care units.

The policy is an equivalent of requirements for door locks found in the Life Safety Code. The use of this policy has allowed the department to offer alternatives for

secured care units that must protect the safety of residents by locking their doors. Under current rules, locking is simply prohibited in secured care units, and as such, strict enforcement of the rule would jeopardize those facilities that serve cognitively impaired residents. The policy requires that if doors of a secured unit are to be locked for the safety of the residents (i.e., Alzheimer's and dementia care units) the door must have magnetic locks which are opened with a key-code/key-pad, or a bar lock which opens after 15 seconds of pressure. It is a policy that has worked well, both for the department and the providers, and has protected the safety of a resident population that does need a restricted environment. This proposed rule seeks to make the policy rule to more effectively monitor the requirements. Additionally, the Centers for Medicaid and Medicare Services (CMS) has approved this policy.

ARM 37.106.301

Several definitions have been struck from ARM 37.106.301. The rationale behind this action is that either the definition exists in the Montana Code Annotated (MCA), or the word defined does not occur anywhere else in the subchapter.

ARM 37.106.302

The heading of the rule has been amended to more accurately, and simply, identify the substance of this rule. The rule has been proposed to be amended to simplify and clarify construction standards, and to make the standards clearly applicable to all health care facilities. The clarifying language of which rules apply in the case of rule conflict is necessary as the "Minimum Standards for all Health Care Facilities" are general rules covering a wide range of facility types. Each facility type needs rules more specific to them than these general rules can be to protect those in the facility. Changes also include updating references to utilize more current construction and life safety standards currently available.

ARM 37.106.302(2)(b) has been added to isolate NFPA 101, "Life Safety Code, 2012 edition" as a distinct rule. The changes made in this subsection reflect the adoption of the most current edition of the Life Safety Code. Language is proposed to be stricken in (2)(a)(i) because under the 2012 edition of the Life Safety Code, exceptions such as that listed are no longer granted.

The web sites added to this rule may be accessed through the link within the rule itself or may be found at the department's Quality Assurance Division web site at <http://www.dphhs.mt.gov/qad/index.shtml>

ARM 37.106.306

The rule has been struck in its entirety and replaced with substantively similar language. The heading has also been changed to more clearly state the specifications relating to this rule in order to aide in clarity of understanding.

Previously this rule listed 31 separate items that comprised "architectural drawing". The department proposes replacing these with eight: 1) civil; 2) landscape; 3) architectural; 4) structural; 5) mechanical; 6) plumbing; 7) electrical; and 8) special systems. This is necessary to reduce unnecessary language from the rule. These eight categories contain all of the information currently stated in the thirty-one. There is no increase or decrease in requirements of the rule; it is simply being more accurately and concisely stated.

ARM 37.106.310

Much of this rule is being struck and replaced with substantively similar language that is more reflective of the current practice. There are no new requirements being added by this change. There are a wide variety of health care facility types, and the applications used for each vary depending on the needs of the specific type of facility. The changes are being proposed to clarify the process, and make it easier for providers to understand.

The language concerning qualified staff is struck and added to new (4). The word "regulatory" has been added to the 'standards' reference. This is necessary as there are requirements outside of those in this subchapter that must be met in order for a facility to be licensed. An example of this would be local building codes, which the department requires documented compliance with prior to licensing a facility.

The rule is further amended to accurately reflect that the department issues licenses for one to three year time periods and addresses the criteria providers must fulfill in order to be issued a one, two, or three year license. The changes are being made to clarify the process, and make it easier for providers to understand.

ARM 37.106.311

The department is proposing to repeal this rule. After a thorough review of the food services act and corresponding administrative rules, the department has chosen to repeal the rule reference from the minimum rule set as many of the food service establishment rules are truly not applicable to the specific health care facilities and the services provided by these facilities that are contained within this rule package.

ARM 37.106.313

The department is proposing reformatted language to comply with rule requirements and include the infection control officer as also being responsible for the infection control program. The infection control officer is now more prevalent in health care facilities and should be utilized effectively to the benefit of those in the facility.

ARM 37.106.314

The department is proposing to amend this rule to update the language. The word "client" has been added to reflect current terminology in use in health care facilities.

Sections (3) and (4) have been struck as being outdated and have no practical application.

ARM 37.106.320

The department is proposing these amendments to recognize that many employees outside of maintenance personnel have duties described in policy pertaining to the maintenance of the physical plant and equipment.

The changes in (4) are necessary in order to recognize that there are floors in many health care facilities that do not require daily cleaning to be kept clean. This change places the responsibility to determine how frequently a floor needs to be cleaned upon the facility itself. This change also recognizes that there are many types of flooring utilized in health care facilities, and that the concern of the department is that these floors be kept clean and in good repair.

The carpet prohibition has been struck. Upon research by the department, which looked at several studies where carpet was investigated as an infection control issue, there is no evidence that carpet in a health care facility is an infection control issue, a concern which created this provision. Without such evidence, a prohibitory rule is not justified.

ARM 37.106.321

The department is proposing to strike (3) as this requirement is already stated in ARM 37.106.313. Section (6) has also been entirely struck. The department cannot think of any other alternate ways of cleaning that are not addressed in this rule, and there has never been a facility that has approached the department with an alternative cleaning system.

ARM 37.106.322

The requirements of the current rule in relation to disaster drills have been found to place unreasonable expectations on some health care facility types. For the most part, many types of facilities, such as Adult Day Cares, Assisted Living, Home Infusion, etc., have been legitimately unable to meet the current requirements of this rule.

This finding has been well established during the course of numerous surveys throughout the State. In response to this, the department has proposed dividing licensed health care facilities into three types: 1) those that can be reasonably expected to accept/treat patients on-site 2) those that cannot, and 3) those that care for their patients/resident off-site. In order to make this distinction, it is proposed that facilities that employ multiple full-time licensed health care professionals on-site can be reasonably expected to receive patients/residents in the event of a disaster. Health care facility types are proposed to be broken down into three categories for the purposes of disaster drill rules and are reflected as (1)(a) and (3). Where the

service provider goes to the patient, the facility disaster plan where the care is being provided must be followed.

Skilled Nursing Facilities (Long-Term Care Facilities), Outpatient Centers for Surgical Services, Critical Access Hospitals, Hospitals, Residential Hospices, Inpatient Hospices, Infirmaries, and Outpatient Centers for Primary Care are specific types of facilities which under this proposed rule, will be required to continue to follow the current requirements, i.e., develop a disaster plan in conjunction with other emergency services in the community. It is necessary to have the procedures in place for an alternative setting to accept and treat patients from other facilities to maintain an appropriate continuum of care. The words "for a minimum of three years" have been added. This is necessary as currently there is no time requirements pertaining to how long the facility must maintain the documentation of disaster drills. This time frame is consistent with the requirements for maintaining fire marshal inspection reports.

Proposed section (3) set regulations for those health care facilities that, in the case of a disaster, would be evacuating residents/patients rather than accepting them. Again, it is proposed that this be differentiated by these types of facilities not having multiple full-time licensed health care professionals on-site. These facilities are identified as Adult Day Cares, Adult Foster Homes, Assisted Living Facilities, Chemical Dependency Treatment Centers, End-Stage Renal Dialysis Facilities, and Intermediate Care Facilities for the Developmentally Disabled, Mental Health Centers, Outdoor Behavioral Facilities, Residential Treatment Facilities, Retirement Homes, and Specialty Mental Health Facilities.

In regards to these facilities, it was found that the current requirement that they develop disaster plans and conduct drills with emergency services was an unreasonable burden, one that could not be met as emergency services do not have the time or resources to accommodate these facilities in complying with this requirement. The proposed rule would instead require these facilities to develop a detailed disaster plan that describes the actions a facility would take in 1) a disaster in which the residents/clients would remain in the facility, and 2) a disaster in which the residents/clients would need to be evacuated. This is necessary to actually require of a facility a disaster policy that is appropriate to the facility type.

This proposed requirement of (4) is being added as currently there is a minimum standard requirement for disaster planning/drills, but there is no minimum requirement for fire drills. This is a necessary requirement for the safety of residents, patients, and staff. This is a requirement for certain individual facility types, but making it a minimum standard for all health care facilities would allow for more consistent regulation of health care facilities. The requirement of four drill annually is consistent with rules pertaining to long-term care nursing facilities, and the requirements of the drills is consistent with requirements of other health care facilities licensed.

ARM 37.106.330

The department is proposing to amend this rule so that a policy manual is retained at the facility itself. Also, it is added that the manual must be available to staff and any requestor. This is necessary to clarify the expectation of this rule, that the policies and procedures established by a facility are those currently enacted, that the manual be available to all, and that it be followed by all staff. Providing clear direction through formal policies and procedures that are to be followed protects and benefits those in the facility.

ARM 37.106.331

The rule has been amended for clarity of language and to eliminate outdated requirements.

The words "hot air tumble" have been added to clarify the type of dryer that is required to be used. This does not change the rule, but only clarifies it.

Current language in the rule requires a hot water supply to the washer to be 160 degrees and equip the laundry room with handwashing facilities. The department is not amending this temperature as this standard is prudent for facilities with this capability. In reviewing temperature regulations among other facility types that provide laundry services, there is no consistent temperature required (values between 110 degrees to 170 degrees were found). However, contingency language has been added for facilities unable to obtain a 160 degree water temperature.

This is necessary as the vast majority of facilities surveyed by the department operate with standard water heaters, which are incapable of reaching water temperatures of 160 degrees. It is currently a requirement in many of the facility specific rules that the hot water supply to bath/washing areas not exceed 120 degrees to prevent scalding. Many smaller facilities do not have the capability to maintain two different hot water systems.

As such, there is no compelling reason to require two hot water temperatures be maintained within each facility regulated. Additionally, the Centers for Disease Control (CDC) has revealed the risk of infection/cross-contamination from laundered clothing/linens is "negligible".

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., July 18, 2013.

8. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 7 above or may be made by completing a request form at any rules hearing held by the department.

10. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

11. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Kurt R. Moser
Kurt R. Moser
Rule Reviewer

/s/ Richard H. Oppen
Richard H. Oppen, Director
Public Health and Human Services

Certified to the Secretary of State June 10, 2013.